

STATE OF CALIFORNIA  
DEPARTMENT OF FOOD AND AGRICULTURE  
MARKETING BRANCH



CALIFORNIA ASPARAGUS COMMISSION LAW  
2008

CHAPTER 21, DIVISION 22 OF THE  
CALIFORNIA FOOD AND AGRICULTURAL CODE

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CALIFORNIA ASPARAGUS COMMISSION LAW

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**FOOD AND AGRICULTURAL CODE  
DIVISION 22  
CHAPTER 21  
CALIFORNIA ASPARAGUS COMMISSION**

**ARTICLE 1  
DECLARATIONS AND GENERAL PROVISIONS**

78201. The production and marketing of asparagus constitutes an important industry of this state which not only provides substantial and necessary revenues for the state and employment for its citizens, but also furnishes food vital to the public.

78202. The maintenance of the asparagus industry of California is necessary to assure the consuming public of a continuous supply of this product and the maintenance of needed levels of income for those engaged in the industry.

78203. The production and marketing of asparagus produced in this state is hereby declared to be affected with a public interest. This chapter is enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

78204. No action taken by the commission, or by any individual in accordance with this chapter or with regulations adopted under this chapter, is a violation of the so-called Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of that Part 2), or any statutory or common law against monopolies or combinations in restraint of trade.

78205. This chapter shall be liberally construed. If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

78206. It is hereby declared as a matter of legislative determination that members of the commission are intended to represent and further the interest of a particular agricultural industry concerned and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are elected or appointed to the commission, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

78206.5. Opportunity exists for continued growth and expansion of the industry by creating new markets in major portions of this country. The success of such an expansion program is uniquely dependent upon effective advertising, promotion, and research because the creation of new markets is essentially a matter of educating and informing people of the use, nutritional value, and availability of the commodity. The expansion of the asparagus industry also provides an important source of jobs for many people in this state, a high proportion of whom reside in historically depressed areas of the state, and serves to ensure the preservation of an agrarian society.

78207. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the production of asparagus the opportunity to avail themselves of the benefits of collective action in the broad fields of development, maintenance, and expansion of markets, marketing research, advertising and promotion, and production and processing research necessary to achieve the purposes stated herein.

## **ARTICLE 2 DEFINITIONS**

78210. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

78211. "Asparagus" means all types of vegetables grown in District 1 and District 2 from the plant family Liliaceae or Lily; Genus, *Asparagus officinalis*.

78212. "Books and records" means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

78213. "Commission" means the California Asparagus Commission.

78214. (a) Except as otherwise provided in Section 78225.5, "districts" consist of the following geographical areas:

(1) District 1 consists of the Counties of Alameda, Alpine, Amador, Calaveras, Contra Costa, Sacramento, San Joaquin, San Mateo, Sutter, Yolo, the City and County of San Francisco, and all other counties north of those counties to the Oregon border which are not included in any other district.

(2) District 2 consists of the Counties of Fresno, Inyo, Kern, Kings, Los Angeles, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tuolumne, Tulare, and Ventura.

(b) The boundaries of any district may be changed by a two-thirds vote of the membership of the commission, that is concurred in by the secretary, when necessary to ensure proper representation by producers. These boundaries need not coincide with county lines.

78215. "Handler" means any person engaged in marketing of asparagus which the person has produced, purchased, or acquired from a producer, or is marketing on behalf of a producer whether as owner, agent, employee, broker, processor, or otherwise.

78216. "Market" or "marketing" means to sell asparagus.

78217. "Market research" means any investigation, development, analysis, or use of information relating to the marketing, sales, or promotion of asparagus in this state and nationally and internationally, including, but not limited to, trade practices, consumer trends, promotion, sales, and advertising.

78218. "Marketing year" means the period beginning January 1 of any year and extending through December 31 of that same year.

78219. "Production research" means any cultural and biological research relating to field production of asparagus.

78220. "Producer" means any person in this state who grows asparagus for market, including landlords who own a percentage of the crop, and who, upon request, provide proof of commodity sale. "Producer" does not include any person who has grown less than five acres of asparagus in the preceding marketing year.

78221. "Processing research" means any research relating to the processing of asparagus.

78222. "Advertising and promotion" means, in addition to its ordinarily accepted meaning, trade promotion and activities for the prevention, modification, or removal of trade barriers which affect the marketing of asparagus.

### **ARTICLE 3 THE CALIFORNIA ASPARAGUS COMMISSION**

78225. (a) There is in the state government the California Asparagus Commission. The commission shall be composed of 13 members, as follows:

(1) Twelve producers, of which eight shall be from District 1 and four from District 2, each of whom shall be elected by and from producers within the respective districts.

(2) One member shall be a public member.

(b) The public member shall be appointed by the secretary from the nominees recommended by the commission.

(c) The secretary and other appropriate individuals, as determined by the commission, shall be ex officio members of the commission.

78225.5. (a) Producers who are not subject to this chapter on the date it becomes operative pursuant to Article 5 (commencing with Section 78270) may petition the commission to establish an additional district that includes all of the counties which are not in District 1 or District 2. If the petition is approved by a two-thirds vote of the commission, the secretary shall conduct an implementation vote of the producers from those counties in accordance with Article 5 (commencing with Section 78270).

(b) If the secretary certifies a favorable vote, all producers from those counties shall be subject to this chapter. Thereafter, in accordance with procedures established by the commission, the number of producers serving on the commission from each district shall be modified, if necessary, to ensure proper representation of each district. However, the commission shall not be composed of more than 14 producers.

78226. (a) The secretary may require the commission to correct or cease any activity or function that is determined by the secretary not to be in the public interest or that is in violation of this chapter.

(b) If the commission refuses or fails to cease these activities or functions or to make corrections required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities or functions of the commission until the time that the cessation or correction of the activities or functions, as required by the secretary, has been accomplished by the commission.

(c) Any action of the commission in violation of the written notice is without legal force or effect. The secretary, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed activities or functions which are the subject of the written notice.

(d) At the same time the written notice is provided to the commission, the secretary shall notify the commission in writing of the specific acts that the secretary determines are not in the public interest or are in violation of this chapter, the secretary's reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and the secretary's recommendations with respect to any action that will make the activities or functions acceptable.

78227. The commission or the secretary may bring an action for judicial relief from the secretary's written notice, or from noncompliance by the commission with the written notice, as the case may be, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other appropriate relief.

78228. When the secretary is required to concur in a decision of the commission, the secretary shall concur, refuse to concur, or request additional information from the commission within 15 working days from the date the secretary receives notification of the decision.

78229. The commission shall reimburse the secretary for all expenditures incurred by the secretary in carrying out his or her duties and responsibilities pursuant to this chapter. However, a court may, if it finds that the secretary acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the responsibility for payment of the secretary's legal costs with regard to that action.

78230. Except for the ex officio members of the commission, an alternate member for each producer member shall be elected, and for the public member shall be appointed, in the same manner and for the same term as the member. Except as provided in Section 78237, an alternate member shall, in the absence of the member for whom he or she is an alternate, serve in place of the member and shall exercise all of the rights, privileges, and powers of the member when serving on the commission. If the status of a member changes, thereby making the member ineligible to serve, or in the event of the death, removal, resignation, or disqualification of a member, the alternate member shall act as a member of the commission until a qualified successor is elected or appointed.

78231. Any vacancy on the commission occurring by the failure of any person elected to or serving on the commission as a producer member or alternate member to continue in his or her position due to a change in his or her status, thereby making the person ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled for the unexpired portion of the term by a majority vote of the remaining members of the commission. The appointee shall meet all of the qualifications set forth in this article as required for the member or alternate whose office he or she is to occupy.

78232. Any vacancy on the commission occurring by the failure of the public member or his or her alternate member to continue in his or her position due to a change in his or her status, thereby making the member or alternate ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled for the unexpired portion of the term by the secretary from nominees recommended by the commission. The appointee shall meet all of the qualifications set forth in this article as required for the member or alternate whose office the appointee is to occupy.

78233. Any producer member and his or her alternate member on the commission shall be an individual producer or an employee representing a producer who has a financial interest in producing, or causing to be produced, asparagus for market. Qualifications of producer members and their alternate members shall be maintained during their entire term of office.

78234. The public member and his or her alternate member on the commission shall have all the powers, rights, and privileges of any other member or alternate member, respectively, on the commission. The public member and his or her alternate member shall not have any financial interest in the asparagus industry.

78235. The term of office of all members and alternate members of the commission, except ex officio members, is three years commencing with the first day of December prior to the beginning of the marketing year in the year of their election and until qualified successors are elected. The terms of office of each member and alternate member of the commission shall be limited to three consecutive terms.



78236. The commission is hereby declared and created a corporate body. It may sue and be sued, enter into contracts, adopt a seal, and has all of the powers of a corporation. Copies of its proceedings, records, and acts, when authenticated, shall be prima facie evidence of the truth of all statements therein.

78237. A quorum of the commission is a majority of the voting members of the commission. Any alternate member to any producer member may serve in the absence of any other member if that member's alternate is also absent and if that action is necessary to establish a quorum. Except as provided in Sections 78214, 78231, and 78302, the vote of a majority of the members present at a meeting at which there is a quorum shall constitute the act of the commission.

78238. The secretary or his or her representatives shall be notified and may attend each meeting of the commission and any committee meeting of the commission.

78239. Members and alternate members of the commission, and members of committees established by the commission, shall not receive any compensation, but notwithstanding Section 11564.5 of the Government Code, shall receive the per diem established by the commission, not to exceed one hundred dollars (\$100) per day. Ex officio members who are state officers or employees are not eligible for per diem pursuant to this section. In addition, members and alternate members of the commission, and members of committees established by the commission, shall be reimbursed for actual and necessary travel expenses under the rules of the Department of Personnel Administration. The per diem and reimbursement for travel expenses shall be paid to those members for each day spent in actual attendance at, or in traveling to and from, meetings of the commission or committees of the commission, or on special assignment for the commission, as approved by the commission.

78240. All funds received by any person from the assessments levied under the authority of this chapter or otherwise received by the commission shall be deposited in banks which the commission may designate and shall be disbursed by order of the commission through an agent or agents designated by the commission for that purpose. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the commission, in an amount of not less than twenty-five thousand dollars (\$25,000).

78241. The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission. No member, alternate member, employee, or agent of the commission is personally liable for the contracts of the commission nor is any such person responsible individually in any way to any producer or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as a principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member, alternate member, employee, or agent of the commission, is responsible individually for any act or omission of any other member, alternate member, employee, or agent of the commission. Liability is several and not joint, and no member, alternate member,

employee, or agent of the commission is liable for the default of any other member, alternate member, employee, or agent of the commission.

#### **ARTICLE 4**

#### **POWERS AND DUTIES OF THE COMMISSION**

78245. The powers and duties of the commission include, but are not limited to, all of those specified in this article.

78246. The commission may adopt, amend, and repeal regulations and operating procedures necessary to carry out this chapter, including regulations governing appeals from actions taken by the commission pursuant to any of its regulations or operating procedures.

78247. The commission may administer and enforce this chapter and perform all acts and exercise all powers incidental to, or in connection with, or deemed reasonably necessary for, the proper or advisable effectuation of this chapter.

78248. The commission may appoint its own officers, including a chairperson, one or more vice chairpersons, and other officers as it deems necessary. The officers have the powers and duties delegated to them by the commission.

78249. The commission may employ a person to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel, necessary to carry out this chapter. The commission may retain a management firm or the staff from any board, commission, or agency of the state or federal government to perform the functions prescribed by this section under the control of the commission. If any person employed by the commission engages in any conduct that the secretary determines is not in the public interest or that is in violation of this chapter, the secretary shall notify the commission of the conduct and request that corrective and, if appropriate, disciplinary action be taken by the commission. If the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the secretary, the secretary may suspend or discharge the person.

78250. The commission may fix the compensation for all employees of the commission.

78251. The commission may appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

78252. The commission may establish offices and incur expenses, enter into any and all contracts and agreements, create liabilities, borrow funds in advance of receipt of assessments, and repay producers for costs incurred during the initial formation of the commission, as may be necessary, in the opinion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

78253. The commission shall keep accurate books, records, and accounts of all its dealings that shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the secretary. A summary of the audit shall be reported to all producers, and a copy of the summary shall also be submitted to the department. In addition, the secretary may, as he or she determines necessary, conduct or cause to be conducted a fiscal and compliance audit of the commission.

78254. The commission may present facts to, and negotiate with, state, federal, and foreign agencies on matters which affect this chapter, to the extent permitted by federal law.

78255. The commission may make, in its name, contracts to receive or render services in formulating and conducting plans and programs and any other contracts or agreements that the commission deems necessary for carrying out this chapter.

78256. The commission may conduct, and contract with others to conduct, any of the following:

- (a) Programs for the development, maintenance, and expansion of foreign and domestic markets, including initiating and participating in trade and tariff related hearings and proceedings.

- (b) Programs for promotion of asparagus sales, including marketing research and advertising and promotion.

- (c) Programs for production and processing research.

- (d) Any other programs or actions in furtherance of the production and sale of asparagus.

78257. The commission may accept contributions or matching private, state, or federal funds, and employ or make contributions of funds to other persons or state or federal agencies, for purposes of this chapter.

78258. The commission may publish and distribute, without charge, bulletins and other communications for the dissemination of information to producers.

78259. The commission shall establish an assessment rate to defray the operating costs of the commission.

78260. The commission shall adopt an annual budget according to accepted accounting practices. The secretary shall concur in the adoption of the budget prior to

the encumbrance of funds, except for encumbrances necessary to pay the compensation of employees of the commission.

78261. The commission shall annually prepare and submit to the secretary, for his or her concurrence, a statement of contemplated activities authorized pursuant to this chapter.

78262. The commission and the secretary shall keep confidential and shall not disclose, except when required by a court order after a hearing in a judicial proceeding involving this chapter and except as otherwise provided in subdivision (c) of Section 78270, all lists of producers in their possession.

78263. The commission may investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

## **ARTICLE 5 IMPLEMENTATION AND VOTING PROCEDURES**

78270. (a) Within 30 days of the effective date of this chapter, the secretary shall establish a list of producers eligible to vote on the implementation of this chapter. In establishing the list, the secretary may require that handlers submit the names and mailing addresses of all known producers. The secretary also may require that the information provided include the quantity of asparagus produced by each producer or, in the alternative, may establish procedures for receiving the information at the time of the referendum vote conducted pursuant to Section 78271. The request for the information shall be in writing, and the requested information shall be filed within 10 days following receipt of the request.

(b) Any producer whose name does not appear upon the appropriate list may have his or her name placed on the list by filing with the secretary a signed statement identifying himself or herself as a producer. The absence of a producer's name from the list does not exempt the producer from paying assessments and does not invalidate any industry votes conducted pursuant to this article.

(c) Proponents and opponents of the commission may contact producers on the lists in a form and manner prescribed by the secretary if all expenses associated with the contacts are paid in advance.

78271. (a) This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the secretary finds, in a referendum vote conducted by the secretary, that at least 40 percent of the total number of producers from the list established by the secretary pursuant to this article have participated and that either of the following has occurred:

(1) Sixty-five percent of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed a majority of the total quantity of asparagus in the preceding marketing year by all of the producers who voted in the referendum.

(2) A majority of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed 65 percent or more of the total quantity of asparagus in the preceding marketing year by all of the producers who voted in the referendum.

(b) The secretary shall use fresh weight in calculating the quantity of asparagus for purposes of the voting in subdivision (a).

78272. The secretary shall establish a period to conduct the referendum that shall not be less than 10 days nor more than 60 days in duration, and may prescribe additional procedures that may be necessary to conduct the referendum. If the initial period established is less than 60 days, the secretary may extend the period to not more than 60 days.

78273. The failure of a producer to receive a ballot shall not invalidate a referendum.

78274. If the secretary finds that a favorable vote has been given as provided in Section 78271, the secretary shall certify and give notice of the favorable vote to all producers whose names and addresses are on file with the secretary.

78275. If the secretary finds that a favorable vote has not been given as provided in Section 78271, the secretary shall certify and declare this chapter inoperative. The secretary may conduct another implementation referendum vote one or more years after the previous vote has been taken.

78276. Upon certification of the commission, the secretary shall contact all producers in each district by mail, or call meetings of producers in each district, for the purpose of nominating and electing persons to the commission. All producers on the secretary's list shall be given written notice of any election meetings at least 10 days prior to the meeting date. To be eligible for election to the commission, producer nominees shall present to the secretary a nomination petition with the signatures of at least three eligible producers from the district from which the nominee is seeking election.

78277. Subsequent to the first election of members of the commission pursuant to this chapter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures that are adopted by the commission with the concurrence of the secretary.

78277.5. Subsequent to the initial implementation referendum vote and the first election of commissioners, the commission shall establish procedures for the purpose of providing persons subject to this chapter with access to producers on the commission's list of producers for purposes related to an election or referendum or an act or determination of the commission. Access to producers shall not include actual release or disclosure of the commission's confidential list of producers.

78278. (a) Prior to the secretary holding the referendum pursuant to Section 78271, the proponents of the commission shall deposit with the secretary the amount that the secretary determines necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum.

(b) Any funds not used in carrying out Section 78271 shall be returned to the proponents of the commission who deposited the funds with the secretary.

(c) Upon the establishment of the commission, the commission may reimburse the proponents of the commission for any funds deposited with the secretary that were used in carrying out Section 78271 and for any legal expenses and other costs incurred in establishing the commission.

## **ARTICLE 6 ASSESSMENTS AND RECORDS**

78285. (a) The commission shall establish the assessment for the following marketing year not later than January 1 of each year, or as soon thereafter as possible. The commission shall adopt bylaws which establish the date for payment of the assessment.

(b) The assessment shall not exceed one cent (\$0.01) per pound of all sales of asparagus by producers in the marketing year.

(c) The handler shall deduct the producer assessment from amounts paid by him or her to the producer and shall be a trustee of these funds until they are paid to the commission at the time and in the manner prescribed by the commission.

(d) A fee greater than the amount specified in subdivision (b) shall not be charged unless approved by the vote specified in Section 78271.

78286. This chapter does not apply to any person who grows asparagus only for his or her own home use or who is not a producer. However, any such person who markets asparagus shall file an affidavit with the commission establishing that the person grows less than five acres of asparagus. The commission shall then determine whether the affidavit should be approved.

78287. Every handler shall keep a complete and accurate record of all asparagus handled with the name of the producer whose asparagus was handled. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be retained by the handler for two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

78288. (a) The commission may specify the conditions under which proprietary information obtained from producers may be disclosed. Otherwise, all proprietary information obtained by the commission or the secretary from producers is confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding involving this chapter.

(b) Information on volume shipments, product value, and any other related information that is required for reports to governmental agencies, financial reports to the commission or aggregate sales and inventory information, and any other

information that the commission requires that gives only totals, but excludes individual producer information, may be disclosed by the commission.

78289. Any assessment which is levied pursuant to this chapter is a personal debt of every producer so assessed.

78290. Every handler shall be personally liable for the payment of collected assessments to the commission. A failure by a handler to collect the assessment shall not exempt the handler from liability and shall not relieve any person subject to this chapter from the obligation to pay the assessment.

78291. Any producer or handler who fails to file a return or pay any assessment within the time required by the commission shall pay the commission a penalty of 10 percent of the amount of the assessment determined to be due and, in addition, pay 11/2 percent interest per month on the unpaid balance.

78292. If the handler is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments to which a corporate handler may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation.

## **ARTICLE 7 ACTIONS AND PENALTIES**

78295. It is a misdemeanor for any person to do any of the following:

- (a) Refuse to render a report, statement, or record required by the commission.
- (b) Furnish a false report, statement, or record required by the commission.
- (c) When engaged in the handling of asparagus, to fail or refuse to furnish the commission, or its duly authorized agents, information concerning the names and addresses of persons from whom the asparagus have been received and the quantity so received.
- (d) Secrete, destroy, or alter records required to be kept under this chapter.

78296. The commission shall adopt procedures to grant individuals aggrieved by its actions or determinations an informal hearing before the commission or before a committee of the commission designated for this purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon petition filed with the appropriate superior court.

78297. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties and for obtaining injunctive relief or specific performance regarding this chapter and the regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any regulation

of the commission, including, but not limited to, the nonpayment of assessments or the intentional submission of false information to the commission. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 4 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of that part, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business involving asparagus until there is full compliance and satisfaction of the judgment. Upon a favorable judgment for the commission, it may receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

78298. The suspension or termination of this chapter shall not affect or waive any right, duty, obligation, or liability which has arisen or which may thereafter arise in connection with this chapter, release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

## **ARTICLE 8**

### **CONTINUATION OR SUSPENSION AND TERMINATION**

78300. From January 1, 1995, to December 30, 1995, inclusive, the commission shall conduct a referendum among the producers to determine whether the operations of this chapter shall be approved and continued in effect. There is a favorable vote under this chapter if the secretary determines from the referendum that a majority of the eligible producers voting in the referendum voted in favor of continuing the operations of this chapter. If the secretary finds that a favorable vote has been given, the secretary shall so certify and this chapter shall remain effective. If the secretary finds that a favorable vote has not been given, the secretary shall so certify and declare the operations of this chapter suspended on December 31, 1995. Thereupon, operation of the commission shall be concluded and funds distributed in the manner provided in Section 78304. No bond or security shall be required for this referendum.

78301. Following a favorable referendum conducted prior to December 31, 1995, the commission shall conduct a referendum every fifth year thereafter, unless a referendum is conducted as the result of a petition filed pursuant to this article. In that case, the referendum shall be held pursuant to procedures provided in Section 78300 every fifth year following the industry petitioned referendum.



78302. (a) Upon a finding by a two-thirds vote of the membership of the commission that the operation of this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operation of this chapter be suspended. However, any suspension shall not become effective until the expiration of the current marketing year.

(b) The secretary shall, upon receipt of the recommendation, or may, after a public hearing to review a petition filed with the secretary requesting a suspension signed by not less than 20 percent of the producers by number who produced not less than 20 percent of the volume of asparagus in the immediately preceding marketing year, hold a referendum among the producers to determine if the operations of the commission shall be suspended. However, the secretary shall not hold a referendum as a result of the petition unless the petitioner shows, by a preponderance of evidence, that the operation of this chapter has not tended to effectuate its declared purposes.

(c) The secretary shall establish a referendum period that shall not be less than 10 days nor more than 60 days in duration. The secretary may prescribe additional procedures necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period. The secretary shall suspend the operation of this chapter if the secretary finds that at least 40 percent of the total number of producers from the list established by the secretary have participated in the referendum and either one of the following has occurred:

(1) Sixty-five percent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed a majority of the total quantity of asparagus in the preceding marketing year by all of the producers who voted in the referendum.

(2) A majority of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed 65 percent or more of the total quantity of asparagus in the preceding marketing year by all of the producers who voted in the referendum.

78303. (a) The secretary shall terminate the commission at the end of the then current marketing year if the secretary finds that the termination of the commission is requested in writing, within a 90-day period, by at least 51 percent of the eligible producers that produce at least 51 percent of the total quantity of asparagus.

(b) The person or persons originating the request shall file a written notice with the secretary in a manner that establishes the date the request is initiated. Any person may withdraw his or her name from the petition requesting the termination prior to the time the request is presented to the secretary.

(c) The signatures on the petition requesting the termination need not all be appended to one sheet of paper. Each person signing the petition shall specify his or her place of business in a manner that will enable the location to be readily ascertained.

(d) The petition shall bear a copy of the notice of intention to terminate the commission. Signatures shall be secured within the time limit specified in this section.

78304. After the effective date of suspension, the operation of the commission shall be concluded and any and all funds remaining held by the commission and not required to defray the expenses of concluding and terminating operations of the commission

shall be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing year. However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of the pro rata refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate program conducted by the University of California or the California State University, another state agency, or a federal agency which deals with the purposes of this chapter. If no such program exists, the funds shall be paid into the State Treasury as unclaimed trust funds.

78305. Upon suspension of the operation of this chapter, the commission shall mail a copy of the notice of suspension to all producers whose names and addresses are on file with the commission and to the appropriate policy committees in both the Assembly and Senate.